SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239, 240, 242, 249, 270 and 275

[Release Nos. 33–9069; 34–60790; IA–2932; IC–28940; File Nos. S7–17–08, S7–18–08, S7–19–08]

RIN 3235–AK17, 3235–AK18, 3235–AK19

References to Ratings of Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Proposed rule; re-opening of comment period; request for additional comments.

SUMMARY: The Securities and Exchange Commission is re-opening the comment period on certain of the proposed rule amendments to remove references to ratings of Nationally Recognized Statistical Rating Organizations proposed in Release Nos. 33–8940 [73 FR 40106 (July 11, 2008)], 34–58070 [73 FR 40088 (July 11, 2008)], and IC–28327 [73 FR 40124 (July 11, 2008)] ''Proposing Releases''). Today, in a companion release, the Commission is taking action on some of the amendments in the Proposing Releases. In view of the continuing public interest in the Proposing Releases and the Commission's desire to receive additional comment, we believe that it is appropriate to re-open the comment period before we take further action on certain proposals made in the Proposing Releases.

DATES: Comments should be received on or before December 8, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–17–08, S7–18–08, and/or S7–19–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–17–08, S7–18–08, and/or S7–19–08. The file number(s) should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, Thomas K. McGowan, Deputy Associate Director, Randall W. Roy, Assistant Director, Joseph I. Levinson, Special Counsel (Net Capital Requirements and Customer Protection) at (202) 551–5510; Paula Jenson, Deputy Chief Counsel, Ignacio Sandoval, Special Counsel (Confirmation of Transactions) at (202) 551–5550; Josephine J. Tao, Assistant Director, Elizabeth A. Sandoe, Branch Chief, and Bradley Gude, Special Counsel (Regulation M) at (202) 551–5720; Marlon Quintanilla Paz, Senior Counsel to the Director at (202) 551–5756, in the Division of Trading and Markets; Hunter Jones, Assistant Director, Penelope W. Saltzman, Assistant Director, or Daniel K. Chang, Attorney at (202) 551–6792, in the Division of Investment Management; or Katherine Hsu, Special Counsel (Asset-Backed Securities), Blair Petrillo, Special Counsel at (202) 551–3430, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 1, 2008, the Commission proposed to eliminate references to ratings issued by nationally recognized statistical rating organizations (''NRSROs'') in certain rules and forms under the Securities Exchange Act of 1934 (''Exchange Act''), the Investment Company Act of 1940 (''Investment Company Act''), the Investment Advisers Act of 1940 (''Investment Advisers Act''), and the Securities Act of 1933 (''Securities Act'').[1] The Commission proposed these amendments, among other reasons, to address the risk that the reference to and use of NRSRO ratings in Commission rules could be interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs, and may encourage investors to place undue reliance on NRSRO ratings.[2] The comment period for the Proposing Releases ended on September 5, 2008. Today, in a companion release, the Commission is adopting proposed amendments to remove references to ratings issued by NRSROs in certain rules.[3] Given regulatory developments,[4] comments received on the proposals, and the continuing public interest in the Proposing Releases, particularly in light of recent economic events, the Commission is requesting additional public comment on certain proposed rule changes relating to the use of references to ratings issued by NRSROs, as detailed below.

II. References to Ratings of NRSROs in Exchange Act Rules

As discussed below, the Commission is deferring consideration of action and soliciting comment on certain of its proposals relating to the use of NRSRO credit ratings in the rules and forms proposed in the Exchange Act Proposing Release.[5] The Commission is seeking

[1] *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 58070 (July 1, 2008) [73 FR 40088 (July 11, 2008)] (proposing amendments to rules and forms under the Securities Exchange Act) (''Exchange Act Proposing Release''); *References to Ratings of Nationally Recognized Statistical Ratings Organizations,* Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124 (July 11, 2008)] (proposing amendments to rules under the Investment Company Act and the Investment Advisers Act) (''Investment Company Act Proposing Release''); *Security Ratings,* Securities Act Release No. 8940 (July 1, 2008) [73 FR 40106 (July 11, 2008)] (proposing amendments to rules and forms under the Securities Act and the Securities Exchange Act) (''Securities Act Proposing Release'').

[2] *See* Exchange Act Proposing Release, *supra* note 1, at Section I; Investment Company Act Proposing Release, *supra* note 1, at Section I; and Securities Act Proposing Release, *supra* note 1.

[3] *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 34–60789 (October 5, 2009) (''NRSRO References Adopting Release'').

[4] *See, e.g., Money Market Fund Reform,* Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] (''Money Market Fund Proposing Release'') (proposing amendments designed to improve the regulatory framework governing money market funds and requesting comment on, among other things, whether the Commission should eliminate Rule 2a–7's use of ratings by NRSROs, or whether the Commission should adopt other alternatives to encourage more independent credit risk analysis, including whether the Commission should reformulate the rule's use of ratings by requiring the fund's directors to designate specific NRSROs that the board of directors determines issue credit ratings that are sufficiently reliable.).

[5] For a detailed discussion of each of these proposals, *see* Exchange Act Proposing Release, *supra* note 1.

additional comment on specific issues as well as general comments on the proposals.

A. Regulation M

Regulation M is intended to preclude manipulative conduct by persons with an interest in the outcome of an offering. It governs the activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities. In particular, Rules 101 and 102 of Regulation M prohibit, in connection with a distribution of securities, issuers, selling shareholders, distribution participants, or any affiliated persons of such persons from directly or indirectly bidding for, purchasing, or attempting to induce a person to bid for or purchase a covered security during certain defined periods. Certain securities are excepted from Rules 101 and 102, including investment grade non-convertible debt securities, investment grade non-convertible preferred securities, and investment grade asset-backed securities.

In the Exchange Act Proposing Release, the Commission proposed to change the exceptions in Rules 101(c)(2) and 102(d)(2) of Regulation M for investment-grade non-convertible debt securities, investment grade non-convertible preferred securities, and investment grade asset-backed securities (''Regulation M Proposals'').[6] The Regulation M Proposals would have removed references to NRSRO ratings from the determination of whether such securities would be eligible for the exceptions, and instead would have excepted non-convertible debt securities and non-convertible preferred securities based on the ''well-known seasoned issuer'' (''WKSI'') concept of Securities Act Rule 405.[7] The Regulation M Proposals would have also excepted asset-backed securities that are registered on Form S–3.[8]

Commenters that specifically addressed the Regulation M Proposals expressed uniform opposition.[9] Many of these commenters stated their view that the proposal would fail to address the issue of investors' undue reliance on NRSRO ratings.[10] Commenters that specifically addressed the Regulation M Proposal also stated that, because the Regulation M Proposals would have altered the scope of the exception for investment-grade non-convertible debt securities, investment-grade non-convertible preferred securities, and asset-backed securities, the Regulation M Proposals would have placed new burdens on issuers and underwriters by imposing the restrictions of Regulation M on currently excepted investment-grade securities.[11] Additionally, commenters that specifically addressed the Regulation M Proposal expressed the view that certain issuers of high yield securities that are currently subject to Regulation M, but are arguably more vulnerable to manipulation than securities currently excepted from Regulation M, would have been excepted from Rules 101 and 102 of Regulation M by the Regulation M Proposals.[12] These commenters suggested retaining the NRSRO references in Regulation M and did not generally suggest alternatives to the Regulation M Proposals that would achieve our goals while addressing these concerns.[13]

The Commission is deferring consideration of action on the Regulation M Proposals. In light of the uniform opposition in the comment letters and the Commission's remaining concern regarding the undue influence of NRSRO ratings, the Commission is seeking additional comment. The Commission is continuing to consider its proposed amendments as well as other changes to Rules 101(c)(2) and 102(d)(2) of Regulation M to address concerns with regard to references to NRSRO ratings, and it continues to invite comments suggesting alternative proposals to achieve the Commission's goals, as well as comments on the Regulation M Proposals generally.[14] In assessing the Commission's proposals and alternatives to these proposals, the Commission would consider a number of factors, including:[15]

- Is the alternative comparable in scope to the existing exceptions? Does the alternative except roughly the same type and quantity of securities as the current exceptions for non-convertible debt, non-convertible preferred, and asset-backed securities?
- Does the alternative capture securities that are traded on basis of their yields, are largely fungible and less likely to be subject to manipulation? Are there factors in addition to yield and fungible nature that effect the trading of nonconvertible and asset backed securities?
- What effect(s) of the alternative, if any, would you anticipate in the investment-grade debt market and high-yield debt market?
- To the extent the alternative excepts non-convertible debt, non-convertible preferred, and asset-backed securities that are not currently excepted, how are those newly excepted securities less likely to be subject to manipulation?
- Will the alternative remove the exception for certain non-convertible debt, non-convertible preferred, and asset-backed securities that fall within the current exceptions?
- Does the alternative provide an equally bright-line demarcation that is not unduly reliant on NRSRO ratings?
- Is the alternative easy for all persons subject to Rules 101 and 102 of Regulation M to determine (*i.e.,* can it be determined by publicly available sources of information)?

Please provide empirical data, when possible, and cite to economic studies to support alternative approaches. Please suggest additional factors that you believe should be considered in assessing alternatives. Please discuss whether and to what extent investors rely upon the current Rule 101 and 102

[6] *See* Exchange Act Proposing Release, *supra* note 1.

[7] *Id.*

[8] *Id.*

[9] We received five comment letters that specifically addressed the Regulation M proposals and each opposed the proposals. Letter from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, American Bar Association (''ABA''), to Florence E. Harmon, Acting Secretary, dated October 10, 2008 (''ABA Letter 1''); Letter from Robert Dobilas, CEO and President, Realpoint LLC, to Secretary, dated September 8, 2008; Letter from Jeremy Reifsnyder and Richard Johns, Co-chairs, ASF Credit Rating Agency Task Force, to Florence E. Harmon, Acting Secretary, dated September 5, 2008 (''ASF Letter''); Letter from Deborah A. Cunningham and Boyce I. Greer, Co-chairs, SIFMA Credit Rating Agency Task Force, to Florence E. Harmon, Acting Secretary, dated September 4, 2008 (''SIFMA Letter''); and Letter from Mayer Brown LLP, to Florence E. Harmon, Acting Secretary, dated September 4, 2008 (''Mayer Brown Letter''). There were comment letters supportive of the Commission's effort to minimize undue reliance on NRSRO ratings by market participants, however, these commenters did not discuss Regulation M. *See, e.g.,* Letter from Suzanne C. Hutchinson, Executive Vice President, Mortgage Insurance Companies of America, to Florence E. Harmon, Acting Secretary, dated September 5, 2008.

[10] *See, e.g.,* SIFMA Letter (''Regulation M is primarily directed at the actions of the issuers of securities and the investment banks who underwrite them; in contrast, the investors that the Commission is concerned with are not users of Regulation M'').

[11] ABA Letter 1, SIFMA Letter.

[12] ABA Letter 1, SIFMA Letter.

[13] The ABA did, however, suggest that should the Commission insist on using the WKSI standard for investment-grade non-convertible debt and investment-grade non-convertible preferred securities, it do so only as an alternative to the current exceptions at Rules 101(c)(2) and 102(d)(2). ABA Letter 1. However, the ABA expressed its ''strong[] belie[f] that the Commission should retain the current exceptions.'' *Id.*

[14] The Commission specifically invited commenters to suggest alternatives to the Regulation M Proposals in the Proposing Release, *see* Exchange Act Proposing Release, *supra* note 1, at 40096, but none were received at that time.

[15] While the Commission asked similar questions in the Exchange Act Proposing Release relating to the specific Regulation M Proposals, the Commission will consider these factors in connection with any alternative proposal suggested by commenters.

exceptions for investment-grade non-convertible and asset-backed securities when making a decision to invest in such securities. Please also discuss whether, given that Rules 101 and 102 of Regulation M are directed at distribution participants, issuers and selling security holders, Rules 101 and 102 of Regulation M pose any danger of undue reliance on NRSRO ratings by investors.

B. Rule 10b–10

Exchange Act Rule 10b–10,[16] the Commission's transaction confirmation rule for broker-dealers, generally requires broker-dealers that effect transactions for customers in securities, other than U.S. savings bonds or municipal securities,[17] to provide those customers with written notification, at or before completion of a securities transaction, disclosing certain information about the terms of the transaction. Specifically, Rule 10b–10 requires the disclosure of the date, time, identity, and number of securities bought or sold; the capacity in which the broker-dealer acted (*e.g.,* as agent or principal); yields on debt securities; and under specified circumstances, the amount of compensation the broker-dealer will receive from the customer and any other parties. In doing so, the rule serves a basic investor protection function by conveying information that: (1) Allows customers to verify the terms of their transactions; (2) alerts customers to potential conflicts of interest; (3) acts as a safeguard against fraud; and (4) allows customers a means of evaluating the costs of their transactions and the quality of the broker-dealer's execution and order-handling.

Paragraph (a)(8) of Rule 10b–10, which the Commission adopted in 1994, requires a broker-dealer to inform the customer in the transaction confirmation if a debt security, other than a government security, is unrated by an NRSRO.[18] While paragraph (a)(8) was intended to alert customers to the potential need to obtain more information about a security from a broker-dealer, it was not intended to suggest that an unrated security is inherently riskier than a rated security.[19] The Commission proposed to delete paragraph (a)(8) of the Rule in light of present concerns regarding undue reliance on NRSRO ratings and confusion about the significance of those ratings.[20] The Commission also stated that, in the absence of this requirement, broker-dealers could voluntarily include this information in confirmations they send to customers.[21]

Four commenters expressed views regarding the proposed deletion of paragraph (a)(8) from Rule 10b–10.[22] One commenter maintained that deleting the requirement could be confusing and misleading to customers, who might presume that the security was rated because the non-rated status would no longer appear on the confirmation.[23] This commenter also noted that customers could be confused by a lack of uniformity in confirmations, if some broker-dealers chose to continue including the non-rated status on confirmations while others did not.[24] Another commenter stated that investors benefit from, and broker-dealers are not materially burdened by, the disclosure requirement in paragraph (a)(8).[25] One commenter expressed the view that deleting paragraph (a)(8) would be appropriate, and noted that a proposed FINRA rule would, among other things, require brokers-dealers to provide investors with the lowest credit rating on a security.[26] Finally, one commenter suggested that if paragraph (a)(8) were deleted, it could be replaced with the use of a credit spread as a credit risk measure.[27]

After considering the comments, the Commission has determined to seek further comment on this proposal before considering action. The Commission is continuing to consider the relative benefits of retaining this information in the transaction confirmation against the benefits of removing the reference to whether a security is unrated. The Commission notes in this regard that the current requirement to disclose when a debt security is unrated by an NRSRO provides investors with an item of factual information that is conveyed together with additional factual information about the terms of the trade. Moreover, we are still evaluating the impact that eliminating this disclosure requirement would have against the possibility of permitting broker-dealers to continue providing, on a voluntary basis, information on the confirmation that a debt security is not rated. In addition, we are concerned that customers may potentially be confused by the lack of a disclosure that they may be accustomed to receiving.

At the same time, the Commission remains concerned that customers may place undue reliance on NRSRO ratings and that there may continue to be confusion about the significance of those ratings. Therefore, the Commission will continue to consider whether to delete paragraph (a)(8) of Rule 10b–10, particularly in light of comments received to date, and invites further comment on the proposed deletion of Rule 10b–10(a)(8), including comments that suggest alternative proposals to achieve the Commission's stated goals. In continuing to assess these issues, the Commission requests comments on the following:

- Would the investor protection function of Rule 10b–10 be, in any way, undercut by deleting paragraph (a)(8) from the Rule? Are there any other alternatives for providing customers with this information?
- What types of securities would typically be unrated by an NRSRO? What types of issuers would typically not have their securities rated by an NRSRO?
- Could the disclosure that a security is unrated be removed from the confirmation without creating customer confusion? If so, given the historical use and investor expectations related to this disclosure, could it be removed without implying that a security is in fact rated?

[16] 17 CFR 240.10b–10.

[17] Municipal securities are covered by Municipal Securities Rulemaking Board rule G–15, which applies to all municipal securities brokers and dealers.

[18] *See* Exchange Act Release No. 34962 (November 10, 1994) [59 FR 59612 (November 17, 1994)] (File No. S7–6–94) (''1994 Adopting Release'').

[19] *Id.* The Commission stated in the 1994 Adopting Release that ''[i]n most cases, this disclosure should verify information that was disclosed to the investor prior to the transaction. If a customer was not previously informed of the security's unrated status, the confirmation disclosure may prompt a dialogue between the customer and the broker-dealer.''

[20] Exchange Act Proposing Release, *supra* note 1, 73 FR at 40092.

[21] *Id.*

[22] *See* Realpoint Letter; SIFMA Letter; Letter from Cate Long, Multiple-Markets to Secretary, Securities and Exchange Commission, dated September 5, 2008 (''Multiple-Markets Letter''); Tom McNerney, Managing Director, Data and Analytics and Marcus Schuler, Managing Director, Regulatory Affairs, Markit to Securities and Exchange Commission, dated September 5, 2008 (''Markit Letter'').

[23] *See* SIFMA Letter.

[24] *Id.*

[25] *See* Realpoint Letter. This commenter also urged the Commission to ''at a minimum, retain the existing requirement * * * [and] strongly consider requiring that the confirmation disclose whether the security is rated by an NRSRO who was not and is not being compensated'' directly or indirectly by the issuer. *Id.*

[26] *See* Multiple-Markets Letter. This commenter stated that a proposed FINRA rule ''serves to protect investors but could be enhanced by the addition of an alternative method of showing credit quality'' by requiring broker-dealers to ''provide the investor with the 'average' rating across NRSROs.'' *Id.* The Commission is considering the FINRA proposed rule change separately. *See* Exchange Act Release No. 56661 (October 15, 2007) [72 FR 59321 (October 19, 2007)] (File No. SR–NASD–2005–100).

[27] *See* Markit Letter. ''The usage of credit spreads for this purpose would be much more accurate, and would be capable of revealing that many unrated securities are actually less risky than rated ones.'' *Id.*

Would the suggested approach vary if certain broker-dealers continued to voluntarily disclose that securities were unrated? Should broker-dealers be required to alert customers that the unrated status of a security is no longer being disclosed? If so, for how long?

• The preliminary note to Rule 10b–10 provides: ''This section requires broker-dealers to disclose specified information in writing to customers at or before completion of a transaction. The requirements under this section that particular information be disclosed is not determinative of a broker-dealer's obligation under the general antifraud provisions of the federal securities laws to disclose additional information to a customer at the time of the customer's investment decision.'' If paragraph (a)(8) were deleted, would the preliminary note to Rule 10b–10 affect a broker-dealer's decision to nonetheless continue to voluntarily disclose whether a security is unrated?

• One approach for addressing possible customer confusion if some broker-dealers continue to disclose that a security is unrated, while others do not, could be to prohibit broker-dealers from making this disclosure on the confirmation. Such an approach, however, could be viewed as inconsistent with broker-dealers' obligations under the general antifraud provisions of the federal securities laws, as highlighted in the preliminary note to Rule 10b–10, to disclose material information to their customers. We invite comment on this approach, and particularly on how a broker-dealer, if it considered the fact that a security was unrated to be material, could disclose this information to customers other than on the confirmation.

• If paragraph (a)(8) were deleted, is there a disclosure that should be required in the confirmation on a transitional or permanent basis that would help prevent customer confusion? For example, should the Commission require broker-dealers, either permanently or temporarily for a transition period, to disclose that broker-dealers are no longer required to include on the confirmation the fact that a security is unrated? Should such a disclosure be made on the confirmation, the account statement, or in a separate document accompanying the confirmation or account statement? What are the costs associated with providing this disclosure on the confirmation, the account statement or in a separate document?

• If the requirement to disclose that a security is unrated were deleted from Rule 10b–10, would broker-dealers nevertheless feel compelled to include the disclosure in order to satisfy their suitability or other sales practice obligations?

• Should the requirement to disclose that a security is unrated be replaced by a requirement to provide a general statement regarding the importance of considering an issuer's creditworthiness?

• If the requirement to disclose that a security is unrated were deleted from the rule, are there alternative external or objective measures of credit risk that could be substituted for ratings by an NRSRO? Is it practicable to replace it with a requirement to disclose specific information regarding an issuer's creditworthiness? If so, what specific information should the Commission consider including?

• Are credit spreads [28] a viable method of addressing an issuer's creditworthiness? For example, is there a consistent, reliable, and generally agreed upon method for determining credit spread? How could information about credit spread be presented so that it could be readily understood by customers, particularly retail customers?

C. Net Capital Rule

The Commission proposed to remove, with limited exceptions, all references to NRSROs from the net capital rule for broker-dealers, Rule 15c3–1 under the Exchange Act (''Net Capital Rule'').[29] Under the Net Capital Rule, broker-dealers are required to maintain, at all times, a minimum amount of net capital, generally defined as a broker-dealer's net worth (assets minus liabilities), plus certain subordinated liabilities, less certain assets that are not readily convertible into cash (*e.g.,* fixed assets), and less a percentage of certain other liquid assets (*e.g.,* securities). When calculating net capital, broker-dealers are permitted to take a lower capital charge, called a ''haircut,'' for certain types of securities that are rated investment grade by an NRSRO.

As the Commission stated in proposing to remove references to NRSROs from the Net Capital Rule, broker-dealers are sophisticated market participants regulated by at least one self-regulatory organization. Accordingly, the Commission expressed its preliminary belief that broker-dealers would be able to assess the creditworthiness of the securities they own without undue hardship.[30] In lieu of the references to NRSROs in the Net Capital Rule, the Commission proposed substituting two subjective standards for credit risk and liquidity risk. For the purposes of determining haircuts on commercial paper, the Commission proposed to replace the current NRSRO ratings-based criterion with a requirement that the instrument be subject to a minimal amount of credit risk and have sufficient liquidity such that it can be sold at or near its carrying value almost immediately.[31] For the purposes of determining haircuts on nonconvertible debt securities as well as on preferred stock, the Commission proposed to replace the current NRSRO ratings-based criterion with a requirement that the instrument be subject to no greater than moderate credit risk and have sufficient liquidity such that it can be sold at or near its carrying value within a reasonably short period of time.[32] The proposed standards were intended to advance the purpose the NRSRO ratings-based standards were designed to advance, which is to enable broker-dealers to make net capital computations that reflect the market risk inherent in the positioning of those particular types of securities. Notwithstanding the Commission's belief that broker-dealers have the financial sophistication and resources to make these determinations,[33] the Commission stated that it would be appropriate, as one means of complying with the proposed amendments, for broker-dealers that wished to continue to rely on credit ratings of NRSROs to do so.[34]

The majority of the commenters to the Commission's proposal to remove references to NRSROs from the Net Capital Rule were opposed to the change.[35] Generally, commenters stated

[28] ''Credit spread'' has been defined to mean the ''differences in yield resulting from different levels of credit risk.'' *See* Oxford Dictionary of Finance and Banking 100 (3rd ed. 2005). *See also* Barron's Dictionary of Finance and Investment Terms 152 (6th ed. 2003) (defining ''credit spread'' as the ''difference in value of two options, when the value of the one sold exceeds the value of the one bought. The opposite of a debt spread.'').

[29] 17 CFR 240.15c3–1; *see* Exchange Act Proposing Release, *supra* note 1, 73 FR at 40092.

[30] *See* Exchange Act Proposing Release, *supra* note 1, 73 FR at 40092.

[31] *Id.*

[32] *Id.*

[33] *See* Exchange Act Proposing Release, *supra* note 1, 73 FR at 40093.

[34] *See* Exchange Act Proposing Release, *supra* note 1, 73 FR at 40092.

[35] *See, e.g.,* SIFMA Letter; Markit Letter; Letter from Jeffrey T. Brown, Senior Vice President, Charles Schwab Co., Inc., Washington, District of Columbia to Florence E. Harmon, Acting Secretary, Commission dated September 5, 2008 (''Schwab Letter''); Letter from Kent Wideman, Group Managing Director, Policy and Rating Committee, DBRS and Mary Keogh, Managing Director, Policy and Regulatory Affairs, DBRS dated September 8, 2008; Letter from Robert Dobilas, CEO and President, Realpoint LLC dated Sept. 8, 2008; Gregory W. Smith, General Counsel, Colorado Public Employees' Retirement Association to Nancy

Continued

that they preferred the existing rule because it is a bright line objective test that is relatively inexpensive to utilize.[36] Commenters asserted that the new subjective standards that rely on the discretion of an interested decision-maker (*i.e.,* the broker-dealer itself) would increase uncertainty, decrease transparency, and decrease market confidence in the financial strength of broker-dealers.[37] Commenters expressed their belief that the direct conflict of interest that would exist for broker-dealers to overestimate the creditworthiness of a security to minimize the amount of required net capital would lead broker-dealers to maintain too little net capital and would have the effect of increasing systemic risk.[38] Commenters also stated that the proposed changes would require increased oversight by Commission staff to enforce the use of internal processes in capital charge calculations.[39] In this regard, commenters noted that Commission staff would need to review procedures at each broker-dealer, and each review would need to include the algorithms of broker-dealer internal processes, requiring intensive scrutiny at both large and small broker-dealers.[40] Further, commenters argued that not all broker-dealers are ''sophisticated'' and have sufficient resources or expertise to develop their own internal processes for rating securities.[41] A minority of commenters supported the proposal to remove references to NRSROs from the net capital rule.[42] One commenter argued that NRSROs have too much influence on the ''quality assessments of securities that the SEC's regulated financial institutions have been required to make.'' [43]

After considering these comments, the Commission has determined to solicit further comment before considering action on the proposed rule amendments to remove references to NRSROs from the Net Capital Rule. In evaluating whether to take action in the future, the Commission would consider, among other things, whether the haircut for the position would be appropriate given the risks inherent in the position. The relevant risks would include the price volatility, creditworthiness, and liquidity of the position. Additionally, in evaluating whether to adopt any amendments, the Commission would consider, among other things, the costs of an objective approach versus a subjective test; whether any alternative objective approaches exist; whether the proposed rule would create conflicts of interest that may result in undesirable consequences, such as increasing systemic risk; and whether broker-dealers have sufficient resources and expertise to implement the proposed rule.

The Commission generally requests comments on whether it should retain the NRSRO reference in the Net Capital Rule, as well as all aspects of the proposed rule and reiterates its request for comment in the Exchange Act Proposing Release. Further, the Commission seeks comments on the factors it would consider in determining whether to amend the requirements for determining haircuts for proprietary securities positions. The Commission also requests comments on the following specific questions:

- Are there factors other than creditworthiness and liquidity that should be required to be considered in determining the appropriate haircut for a proprietary securities position?
- What would be the cost to broker-dealers to develop, document, and enforce internal procedures to evaluating the creditworthiness and liquidity of proprietary securities positions?
- Do certain broker-dealers lack sufficient resources or expertise to independently assess the creditworthiness of securities?
- How could the concern that a broker-dealer would have an incentive to downplay the credit risk associated with a particular security to minimize capital charges be addressed? Would reviews of internal procedures by examiners be sufficient to address this concern? Are there other methods, such as reviews by internal or external auditors, that could effectively address this concern? Do other objective measures of credit risk exist, and could they be used in place of NRSRO ratings to address this concern?
- If the Commission decides to adopt the proposal to replace the current NRSRO ratings-based criterion with a requirement that the instrument be subject to a minimal amount of credit risk and have sufficient liquidity, and permits broker-dealers to continue to rely on credit ratings of NRSROs as one mean of complying with the proposed amendments, should the Commission nevertheless require that the standard that results in a higher determination of credit risk be used for each individual instrument?
- If the Commission replaces the current NRSRO ratings-based criterion with a requirement that the instrument be subject to a minimal amount of credit risk and have sufficient liquidity such that it can be sold at or near its carrying value within a reasonably short period of time, should the Commission also require that broker-dealers consult credit ratings of NRSROs for that instrument, comparing which method requires the higher capital charge, and require that the broker-dealer take the higher capital charge?
- Conversely, if broker-dealers continue to rely on credit ratings of NRSROs, either because the Commission does not remove the reference to NRSROs from the Net Capital Rule or as one means of complying with the proposed amendments, should the Commission require an analysis of the debt instrument that is independent of the NRSRO credit rating (*e.g.,* an internal risk assessment or one performed by a third-party vendor) to support the use of the credit rating of NRSROs, and if the analysis does not support the credit rating, require that the broker-dealer take the higher capital charge?

III. References to Ratings of NRSROs in Securities Act Rules

In the Securities Act Proposing release, the Commission proposed changes to certain eligibility criteria for issuers to conduct primary offerings ''off the shelf'' under Securities Act Rule 415 [44] and Forms S–3 and F–3 [45] and changes to other rules that refer to that eligibility.[46] In addition, the Commission proposed changes to Rule 436(g) under the Securities Act.[47] Today, in a companion release, the Commission is proposing amendments to our rules to require disclosure of information regarding credit ratings used by registrants in connection with a registered offering of securities so that investors will better understand the credit rating and its limitations and, in another companion release, the

M. Morris, Secretary, Commission dated September 5, 2008.

[36] *See, e.g.,* SIFMA Letter.

[37] Letter from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, and Vicki O. Tucker, Chair, Committee on Securitization and Structured Finance, Business Law Section, American Bar Association to Florence E. Harmon, Acting Secretary, Commission dated September 12, 2008 (''ABA Letter 2''); SIFMA letter.

[38] ABA Letter 2.

[39] Schwab Letter.

[40] Schwab Letter.

[41] ABA Letter 2; Schwab Letter.

[42] *See* Letter from Suzanne C. Hutchinson, Executive Vice President, Mortgage Insurance Companies of America; Letter from Lawrence J. White, Professor of Economics, Stern School of Business, New York University, New York, New York to Commission dated September 5, 2008 (''White Letter'').

[43] White Letter.

[44] 17 CFR 230.415.

[45] 17 CFR 239.13 and 17 CFR 239.33.

[46] For a more detailed discussion of each of these proposals, *see* Securities Act Proposing Release, *supra* note 1.

[47] 17 CFR 230.436(g).

Commission is soliciting comment on whether it should propose rescinding Rule 436(g) under the Securities Act.[48] The Commission is deferring consideration of action at this time on the other proposals in the Securities Act Proposing Release. However, in view of the continuing public interest in the Proposing Releases and the Commission's desire to receive additional comment, the Commission is re-opening the comment period for the Securities Act Proposing Release. As the Commission continues to evaluate and consider the proposed rule revisions outlined in this section, the Commission will review whether there are appropriate alternatives to references to credit ratings by NRSROs in those rules and forms.

Under existing requirements, an issuer's ability to conduct shelf offerings of non-convertible debt or asset-backed securities (ABS) may depend on, among other things, the securities' credit ratings. In particular, a primary offering of non-convertible debt securities is eligible for registration on Form S–3 or Form F–3, regardless of the issuer's public float or reporting history, if the securities are investment grade rated.[49] Securities registered on Form S–3 or Form F–3 may be offered on a delayed, or ''shelf,'' basis.[50] An offering of asset-backed securities is eligible for shelf registration on Form S–3 or Form F–3 if the securities are investment grade rated and the offering meets certain other conditions.[51] In addition, a subset of asset-backed securities, ''mortgage-related securities,'' that, among other things, are rated in one of the two highest rating categories by an NRSRO,[52] may be offered on a delayed basis, regardless of the form on which the offering is registered.[53]

In the Securities Act Proposing Release, the Commission proposed to replace the shelf eligibility requirements that rely on investment grade ratings with alternate requirements.[54] For the registration of a non-convertible debt offering on Form S–3 or Form F–3, the Commission proposed to require that, instead of having investment grade rated securities, a registrant must have issued $1 billion of non-convertible securities in registered primary offerings over the prior three years. For shelf eligibility of ABS offerings, including offerings of mortgage related securities, the Commission proposed to replace the investment grade ratings requirement with requirements that initial and subsequent resales of ABS offerings be made in minimum denominations of $250,000 and that initial sales of the securities be made only to ''qualified institutional buyers,'' as that term is defined in Securities Act Rule 144A.[55] We also proposed revisions to related rules and form requirements. We received letters from 35 commenters on these proposals. Most commenters opposed the proposed amendments that would replace the investment grade ratings component of the shelf eligibility requirements.[56]

At this time, the Commission is deferring consideration of action on the proposals to amend the investment grade ratings component of the Form S–3 or Form F–3 eligibility requirements and, as noted above, we are soliciting further comment on the proposals. With respect to the ABS shelf eligibility requirements, the staff of the Division of Corporation Finance is currently engaged in a broad review of the Commission's regulation of asset-backed securities including disclosure, offering process, and reporting of asset-backed issuers. In connection with that review, the staff is evaluating alternatives to the investment grade rating requirements, including alternatives other than the type of purchaser or the denomination of the security. The Commission believes that any proposal for an alternative to investment grade ratings for the purpose of ABS shelf eligibility will be better considered together with other possible proposals to the regulations governing the offer and sale of asset-backed securities.

IV. References to Ratings of NRSROs in Investment Company Act and Investment Advisers Act Rules

In the Investment Company Act Proposing Release, the Commission proposed to amend four of the Commission's rules under the Investment Company Act[57] (Rules 2a–7, 3a–7, 5b–3, and 10f–3) and one rule under the Investment Advisers Act[58] (Rule 206(3)–3T) that refer to credit ratings by NRSROs.[59] These rules use the credit ratings issued by NRSROs in different contexts, and for different purposes, to distinguish among various grades of debt and other rated securities.

The Commission proposed to amend each rule to omit references to NRSRO ratings and, except with respect to one of the rules, substitute alternative provisions that were designed to achieve the same purpose as the ratings.[60] The Commission received 66

[48] *See* the releases considered by the Commission on September 17, 2009 regarding proposed amendments to require disclosure of information about credit ratings used by registrants in connection with registered offerings, and soliciting comment on whether the Commission should propose to rescind Rule 436(g) under the Securities Act.

[49] *See* General Instruction I.B.2 of Form S–3 and General Instruction I.B.2 of Form F–3.

[50] *See* 17 CFR 230.415(a)(1)(x).

[51] *See* General Instruction I.B.5. of Form S–3.

[52] The term ''mortgage related securities'' is defined by Section 3(a)(41) of the Exchange Act [15 U.S.C. 78c(a)(41)].

[53] *See* 17 CFR 230.415(a)(1)(vii).

[54] *See* Securities Act Proposing Release, *supra* note 1.

[55] 17 CFR 230.144A.

[56] *See* ABA Letter 1; ABA Letter 2; SIFMA Letter; Letter from Thomas G. Berkmeyer, Associate General Counsel, American Electric Power Service Corporation to Secretary, Commission dated September 4, 2008; ASF Letter; Letter from Shirley Baum, Senior Attorney, Pinnacle West Capital Corporation to Secretary, Commission dated September 5, 2008; Letter from Walter E. Skrowronski, President, Boeing Capital Corporation to Secretary, Commission dated September 26, 2008; Schwab Letter; Letter from Constance Curnow to Christopher Cox, Chairman, Commission dated August 28, 2008; Letter from Davis Polk & Wardwell to Florence E. Harmon, Acting Secretary, Commission dated September 4, 2008; Letter from Debevoise & Plimpton LLP to Florence E. Harmon, Acting Secretary, Commission dated September 3, 2008 (''Debevoise Letter''); Letter from Dewey & LeBoeuf LLP to Florence Harmon, Acting Secretary, Commission dated September 5, 2008; Letter from James P. Carney, Vice President and Assistant Treasurer, Dominion Resources, Inc. to Florence E. Harmon, Acting Secretary, Commission dated September 5, 2008; Letter from David K. Owens, Executive Vice President, Business Operations Group, Edison Electric Institute to Commission dated September 5, 2008; Letter from Joseph J. Novak, General Counsel, Incapital, LLC to Florence E. Harmon, Acting Secretary, Commission dated September 5, 2008; Letter from Richard A. Lococo, Senior Vice President & Deputy General Counsel, Manulife Financial Corporation to Commission dated September 5, 2008; Mayer Brown Letter; Letter from John A. Courson, Chief Operating Officer, Mortgage Bankers Association to Jill M. Peterson, Assistant Secretary, Commission dated September 5, 2008; Letter from Michael W. Rico, Assistant Treasurer, PNM Resources, Inc. to Office of the Secretary, Commission dated September 5, 2008; Letter from W. Paul Bowers, Executive Vice President and Chief Financial Officer, Southern Company to Florence Harmon, Acting Secretary, Commission dated September 5, 2008; Letter from Vincent L. Ammann, Jr., Vice President and Chief Financial Officer, WGL Holdings, Inc. and Washington Gas Light Company to Florence Harmon, Acting Secretary, Commission dated September 10, 2008; Letter from James C. Fleming, Wisconsin Energy Corporation to Secretary, Commission, dated September 5, 2008.

[57] 15 U.S.C. 80a. Unless otherwise noted, all references to rules under the Investment Company Act will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

[58] 15 U.S.C. 80b. Unless otherwise noted, all references to rules under the Investment Advisers Act will be to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275].

[59] Investment Company Act Proposing Release, *supra* note 1.

[60] *See* Investment Company Act Proposing Release, *supra* note 1, at Section III. As discussed in the Investment Company Act Proposing Release, we did not propose an alternative provision for one of the NRSRO references in Rule 3a–7, which excludes structured finance vehicles from the definition of ''investment company'' subject to certain conditions. We did not provide an alternative for the requirement that structured financings offered to the general public have an investment grade rating because we believed that

Continued

comment letters on the proposal, most of which opposed the proposals.[61] Commenters expressed a variety of concerns regarding the proposed amendments. For example, some commenters expressed concern that the proposed amendments would replace an objective standard of an NRSRO rating with a riskier, subjective determination by the board of directors, which would be difficult to apply and would increase the burden on the fund's board.[62] Several commenters also asserted it was premature for the Commission to consider eliminating NRSRO ratings from Commission rules given the Commission's ongoing initiatives to address issues such as improving the accuracy of NRSRO ratings and eliminating NRSRO conflicts of interest.[63]

In a companion release the Commission is issuing today, the Commission is adopting certain of the proposed amendments to Rules 5b–3 and 10f–3 under the Investment Company Act.[64] The Commission is deferring consideration of action on the remaining proposed amendments to Rules 2a–7, 3a–7, and 5b–3 under the Investment Company Act and Rule 206(3)–3T under the Investment Advisers Act in light of the comments received on the proposed amendments and further actions the Commission is considering in separate rulemakings.

Rule 2a–7 under the Investment Company Act governs the operation of money market funds, which rely on the rule to use different valuation and pricing methods than other investment companies (''funds'') are permitted to use, to help maintain a stable share price. The rule contains conditions that restrict money market funds' portfolio investments to securities that have received certain minimum credit ratings from NRSROs or comparable unrated securities.[65] This past June, the Commission proposed amendments to Rule 2a–7 and related rules designed to improve the regulatory framework governing money market funds.[66] In that release, the Commission requested further comment on whether we should eliminate the use of NRSRO ratings in Rule 2a–7, including whether we should consider establishing a roadmap for phasing in the eventual removal of NRSRO references from the rule. We also asked whether we should adopt other alternatives to encourage more independent credit risk analysis, including whether we should reformulate the rule's use of ratings by requiring a money market fund's directors to designate specific NRSROs that the board determines issue ratings that are sufficiently reliable.[67]

Rule 3a–7 under the Investment Company Act excludes structured finance vehicles from the Act's definition of ''investment company'' subject to certain conditions.[68] The conditions include the requirement that structured financings offered to the general public be rated by at least one NRSRO in one of the four highest ratings categories, with certain exceptions.[69] As discussed above, Commission staff is developing proposals regarding the offer and sale of asset-backed securities, which may affect the exemptive relief provided by Rule 3a–7.[70] In considering those changes, the Commission may revisit the use of NRSRO ratings in the offer and sale of asset-backed securities.

Rule 5b–3 under the Investment Company Act permits a fund, subject to certain conditions, to treat a repurchase agreement as an acquisition of the securities collateralizing the repurchase agreement in determining whether the fund is in compliance with two provisions of the Act that may affect a fund's ability to invest in repurchase agreements.[71] The rule permits a fund to treat a repurchase agreement as an investment in the underlying collateral if the agreement is ''collateralized fully,'' and some types of collateral must have received certain credit ratings in order to meet this standard.[72] This reference to credit ratings is used to determine credit risk and liquidity of collateral securities that the fund may look to in meeting the diversification requirements of the Investment Company Act.[73] Fourteen commenters opposed the proposed amendment to eliminate NRSRO ratings references from this definition because, among other reasons, it would replace an objective standard with a subjective standard that would be difficult to apply.

Rule 5b–3 includes a second reference to NRSRO ratings, in the definition of ''refunded security.'' [74] The rule allows a fund for purposes of the Investment Company Act's diversification requirements to treat the acquisition of a refunded security as the acquisition of U.S. government securities that are pledged to make payments to investors if, among other conditions, an independent certified public accountant has certified to the escrow agent that the government securities will satisfy all scheduled payments on the refunded security.[75] Three commenters opposed

these offerings generally were not made to retail investors. *See id.* 73 FR at nn. 41–42 and accompanying and following text.

[61] *See, e.g.,* Letter from Ronald W. Forbes and Rodney D. Johnson, Independent Directors of the Blackrock money market funds to Florence Harmon, Acting Secretary, dated September 10, 2008; Letter from Robert G. Zack, Executive Vice President and General Counsel, OppenheimerFunds, Inc. to Florence Harmon, Acting Secretary, dated September 4, 2008. The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10 am and 3 pm (File No. S7–19–08), and also are available on the Commission's Internet Web site (*http://www.sec.gov/comments/s7-19-08/s71908.shtml*).

[62] *See, e.g.,* Letter from David Oestreicher, Chief Legal Counsel, T. Rowe Price Associates, Inc. to Florence Harmon, Acting Secretary, dated September 5, 2008.

[63] *See, e.g.,* ABA Letter 2; SIFMA Letter. A few commenters also stated that removing the references may lead to a significant risk of unintended adverse consequences to capital markets, regulatory community and other industries that have regulatory requirements involving NRSRO ratings and may not address concerns about undue investor reliance on NRSRO ratings. *See, e.g.,* SIFMA Letter; Debevoise Letter; Letter from Nathan Douglas, Secretariat, Institutional Money Market Funds Association to Florence Harmon, Acting Secretary, dated September 5, 2008).

[64] *See* NRSRO References Adopting Release, *supra* note 3.

[65] For example, Rule 2a–7 limits a money market fund's portfolio investments to securities that have received credit ratings from at least one NRSRO in one of the two highest short-term rating categories or, if unrated, be of comparable quality. Rule 2a–7(a)(10) (definition of ''Eligible Security'').

[66] *See* Money Market Fund Reform, Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)].

[67] *See id.* at Section II.A.2.a.

[68] Structured financings meet the definition of investment company under Section 3(a) of the Act because they issue securities and invest in, own, hold, or trade securities. Almost none of the structured financings, however, are able to operate under the Act's requirements. *See* Exclusion from the Definition of Investment Company for Structured Financings, Investment Company Act Release No. 19105 (Nov. 19, 1992) [57 FR 56248 (Nov. 27, 1992)].

[69] Rule 3a–7(a)(2).

[70] *See supra* Section III.

[71] Section 5(b)(1) of the Act limits the amount that a fund that holds itself out as being a diversified investment company may invest in the securities of any one issuer (other than the U.S. Government). Section 12(d)(3) of the Investment Company Act generally prohibits a fund from acquiring an interest in a broker, dealer, or underwriter. Because a repurchase agreement may be considered to be the acquisition of an interest in the counterparty, Section 12(d)(3) may limit a fund's ability to enter into repurchase agreements with many of the firms that act as repurchase agreement counterparties.

[72] *See* Rule 5b–3(c)(1)(iv).

[73] *See* Rule 5b–3(c)(1)(iv)(C)–(D).

[74] A ''refunded security'' is a debt security whose principal and interest are to be paid by U.S. government securities that have been irrevocably placed in an escrow account and pledged only to payment of the principal and interest on the debt security. See Rule 5b–3(c)(4).

[75] *See* Rule 5b–3(c)(4)(iii) (requiring at the time the deposited securities are placed in the escrow account that an independent accountant has certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest, and applicable premiums in the refunded securities).

eliminating this NRSRO reference on the grounds it could increase fund expenses and decrease liquidity if funds chose not to bid on refunded securities for which certifications are not available. As discussed in the NRSRO References Adopting Release, because we understand that bond indentures or resolutions authorizing the issuance of the refunded bonds typically require that the escrow agent receive the requisite certification, we do not share these commenters' concerns and are amending Rule 5b–3 to eliminate this reference to NRSRO ratings.[76]

Finally, Rule 206(3)–3T under the Investment Advisers Act establishes a temporary alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of Section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients.[77] The rule contains a condition that excludes securities from coverage under the rule if the adviser or its close affiliate is the issuer or an underwriter of the security, unless it is an underwriter of non-convertible debt securities rated in one of the four highest rating categories of at least two NRSROs.[78] The Commission intends to consider taking separate, broader, action on Rule 206(3)–3T, which is set to expire at the end of this year.[79]

As previously mentioned, the Commission is deferring consideration of action on the proposals to remove NRSRO references from the rules described above under the Investment Company Act and Investment Advisers Act. Our broader consideration of each of these rules will afford us the opportunity to re-evaluate credit rating references in those rules.

The Commission generally requests further comment on the proposed amendments described above to Rules 3a–7 and 5b–3 under the Investment Company Act and Rule 206(3)–3T under the Investment Advisers Act. We also request specific comment on whether the rules should require, in place of existing references to credit ratings, alternate standards that would use (i) credit ratings as a minimum standard, and (ii) additional criteria that must be met with regard to evaluating the securities, such as determinations of credit quality, liquidity, or appropriateness of the security as an investment for the particular purchaser. This approach, if applied to Rules 3a–7 and 5b–3 under the Investment Company Act and Rule 206(3)–3T under the Investment Advisers Act, would be designed to help reduce undue reliance on ratings by requiring an additional evaluation of credit quality, while retaining the external or objective measure of the NRSRO rating. Under Rule 2a–7 in its current form, for example, a determination that a security is an ''eligible security'' as a result of its NRSRO ratings is a necessary but not sufficient finding in order for a money market fund to acquire the security. The rule also currently requires a determination that the security presents minimal credit risks, and specifically requires that the determination ''be based on factors pertaining to credit quality in addition to any ratings assigned to such securities by an NRSRO.'' [80] Although the Commission, as noted above, is continuing to consider whether to remove references to credit ratings from Rule 2a–7 altogether, we request comment on whether we should consider the two-step approach of existing Rule 2a–7 for the other rules (*i.e.,* Rules 3a–7, 5b–3, and 206(3)–3T) that contain references to NRSRO credit ratings. Alternatively, are there other objective measures of credit risk, and should they be used in place of NRSRO ratings to address the concerns addressed by the rules?

V. Request for Comment

The Commission generally requests comment on the Proposing Releases as indicated above, including whether the Commission should remove references to credit ratings by NRSROs in Commission rules and the appropriate factors to consider in making this determination. The Commission asks that commenters provide specific reasons and information to support alternative recommendations. Please provide empirical data, when possible, and cite to economic studies, if any, to support alternative approaches.

By the Commission.

Dated: October 5, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–24365 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

[76] *See* NRSRO References Adopting Release, *supra* note 3, at Section II.B.1.

[77] Rule 206(3)–3T [17 CFR 275.206(3)–3T]. *See also* Temporary Rule Regarding Principal Trades with Certain Advisory Clients, Investment Advisers Act Release No. 2653 (September 24, 2007) [72 FR 55022 (September 28, 2007)] (''Principal Trade Rule Release''). Section 206(3) of the Investment Advisers Act makes it unlawful for any investment adviser, directly or indirectly ''acting as principal for his own account, knowingly to sell any security to or purchase any security from a client * * * without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.'' 15 U.S.C. 80b–6(3).

[78] Rule 206(3)–3T(c).

[79] *See* Principal Trade Rule Release, *supra* note 77.

[80] Rule 2a–7(c)(3)(i).